

# Integrity Report

## Monitoring Project on IBAC: Police Misconduct Complaints

October 2019

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# Overview

The area of IBAC practice that is the subject of this Integrity Report is IBAC's process for the assessment and determination of complaints about police misconduct.<sup>1</sup> The oversight of police misconduct by Victoria Police and IBAC is a subject of public interest and was recently the subject of an inquiry by the former IBAC Parliamentary Committee.<sup>2</sup>

An effective and transparent complaints management system is important in maintaining public confidence in IBAC's independent oversight of police misconduct.

In May and June 2018 the Victorian Inspectorate (the Inspectorate) conducted a preliminary review of IBAC's assessment and determination process by inspecting a sample of 87 complaint files containing allegations of police misconduct, processed by IBAC over the period between January and March 2018. The review found that, for the majority of allegations in the sample that were dismissed by IBAC or referred by IBAC to the Chief Commissioner of Police for investigation, there was no record of the analysis carried out by IBAC as to why the allegations were dismissed or so referred.

It is not to be inferred from the absence of a recorded analysis that IBAC did not conduct any analysis of those allegations. However, the absence of a recorded analysis in the majority of allegations in the sample indicated to the Inspectorate a lack of transparency in IBAC's complaint assessment and determination process because the basis upon which IBAC made its assessment

and determination of the complaints could not be ascertained from the information recorded.

The review was referred to as a preliminary review by the Inspectorate because the findings of the review were to be confirmed by an inspection of a larger sample of IBAC police complaint files. The Inspectorate shared its findings with IBAC in June 2018. IBAC responded by indicating that it did not accept that its assessment and determination process lacked transparency and offered to provide further samples of complaint files outside the period of the review to demonstrate the transparency of its process.

In October 2018 the Inspectorate informed IBAC that it would inspect additional files to complete a review as opposed to a preliminary review of IBAC's assessment and determination process. IBAC was informed that the focus of the review would be on the recording by IBAC of its analysis of complaints about police. In its response in November 2018, IBAC advised that a new complaint management system known as 'Condor' was being implemented and that a new Deputy Commissioner had been appointed to lead the oversight of police misconduct. IBAC gave representatives of the Inspectorate a demonstration of Condor on 29 January 2019 and explained that Condor provided additional fields for the recording of more analysis at both the assessment and determination stages of a complaint. IBAC and the Inspectorate agreed that it would not

<sup>1</sup> Allegations against unsworn Victoria Police employees were not considered as part of this project.

<sup>2</sup> Inquiry into the external oversight of police corruption and misconduct in Victoria, IBACC Report No. 6, 58th Parliament, September 2018.

be necessary for the Inspectorate to consider additional cases processed under IBAC's former complaint management system to complete its review. The IBAC files inspected by the Inspectorate for the purposes of the preliminary review formed the basis of the Inspectorate's review of IBAC's assessment and determination process under IBAC's former system.

The Inspectorate informed IBAC on 15 March 2019 that it would complete its review by inspecting a small sample of 50 police complaint files processed under Condor in November 2018. The analysis recorded by IBAC in those 50 files would be compared with analysis recorded by IBAC in the 87 files inspected by the Inspectorate under IBAC's former complaint management system.

Whilst a small sample, the Inspectorate found that Condor represented a significant improvement in the recording of the analysis by IBAC of police misconduct complaints and, accordingly, enhanced the transparency of IBAC's assessment and determination process.

This report makes recommendations directed to further enhancing the transparency of IBAC's assessment and determination process through the recording of an analysis with respect to each complaint IBAC receives about police misconduct.

# 1 | IBAC's statutory requirements

The statutory provisions that relate to IBAC's obligations to receive, assess and determine complaints about police misconduct are found in Part 3 (Investigations) of the *Independent Broad-based Anti-corruption Commission Act 2011* (IBAC Act).

## Receipt of police misconduct complaints

IBAC has the function of receiving complaints from persons, including detained persons, who wish to make complaints about police misconduct. Those complaints must be in writing unless IBAC determines exceptional circumstances apply.<sup>3</sup> IBAC may receive information from any person or body relevant to the investigation of a complaint or the conducting of a preliminary inquiry in relation to a complaint.<sup>4</sup>

## Actions on the receipt of police misconduct complaints

In relation to any complaint received by IBAC, IBAC *must* in accordance with the IBAC Act take the following actions: (a) **dismiss** the complaint if there are grounds to do so, (b) **investigate** the complaint or (c) make a **referral** of the complaint.<sup>5</sup>

IBAC may conduct a preliminary inquiry for the purpose of determining which action to take.<sup>6</sup> The Chief Commissioner of Police is required to comply with a request for information from IBAC for the purpose of a preliminary inquiry within 7 days of receiving the request.<sup>7</sup> A person may be summonsed by IBAC to produce documents for the purpose of the preliminary inquiry with penalties for failure to comply with the summons.<sup>8</sup>

IBAC *may* notify the person who made the complaint of the action taken by IBAC.<sup>9</sup>

## The action of investigating a police misconduct complaint

IBAC may conduct an investigation of a complaint about police misconduct in accordance with its investigative functions which include the power to make preliminary inquiries<sup>10</sup> and the exercise of covert power<sup>11</sup> and coercive power.<sup>12</sup> IBAC does not have an arrest power or a search power. IBAC may also attempt to resolve a police conduct complaint by conciliation.<sup>13</sup>

3 IBAC Act, section 53

4 IBAC Act, section 56

5 IBAC Act, section 58 (a-c)

6 IBAC Act, section 59A

7 IBAC Act, section 59D

8 IBAC Act, section 59E

9 IBAC Act, section 59

10 IBAC Act, Part 3, Division 3A – Preliminary inquiries

11 IBAC has covert powers under the *Telecommunications (Interception) (State Provisions) Act 1988*, *Surveillance Devices Act 1999* and *Crimes (Controlled Operations) Act 2004 (Vic)*

12 IBAC Act, Part 6, Div 1- Examinations

13 IBAC Act, section 64

## The action of referring a police misconduct complaint

Under section 15(3)(d) of the IBAC Act, IBAC has the function of making referrals of complaints to public bodies, including referrals of investigations to prosecution bodies. Part 3, Division 5 of the IBAC Act specifically outlines IBAC's function in relation to referrals. Under section 73 in that Division, IBAC must refer to the Chief Commissioner of Police a complaint received by IBAC if, at any time, IBAC considers that (a) the subject matter of the complaint is relevant to the performance of the duties and functions or the exercise of powers of the Chief Commissioner of Police *and* (b) it would be more appropriate for the complaint to be investigated by the Chief Commissioner of Police rather than by IBAC.

IBAC does not have a review function with respect to matters it refers to the Chief Commissioner of Police with the exception of the provisions in sections 160 and 78 of the IBAC Act. Under section 160 of the IBAC Act, IBAC may receive a report from the Chief Commissioner of Police and request them to take any action IBAC considers appropriate. The Chief Commissioner of Police must then report back to IBAC. Under section 78, IBAC can require the Chief Commissioner of Police to provide information about the matter referred for investigation and any action taken by them with respect to that investigation.

## The action of dismissing a police misconduct complaint

IBAC has an absolute discretion to determine that a complaint does not warrant investigation. A complaint is dismissed by IBAC if in the *opinion* of IBAC the following statutory grounds under section 67(2) of the IBAC Act apply:

- (a) the subject matter of the complaint is trivial or unrelated to the functions of the IBAC; or
- (b) the complaint is frivolous or vexatious; or
- (c) the complaint lacks substance or credibility; or
- (d) the matter has already been the subject of a complaint which has been investigated or otherwise dealt with; or
- (e) the complaint relates to conduct that occurred at too remote a time to justify investigation; or
- (f) the complaint was not made genuinely or was made primarily for a mischievous purpose; or
- (g) in all of the circumstances, the conduct does not warrant investigation.

Under section 67(3) of the IBAC Act, if a person who makes a complaint (other than a complaint about the Chief Commissioner, or a Deputy Commissioner or an Assistant Commissioner of Police) has delayed making the complaint by more than a year after becoming aware of the conduct which is the subject of the complaint, IBAC may (i) require the person to give an explanation for the delay and (ii) if not satisfied with the explanation, in its absolute discretion, decide not to investigate the complaint.

## 2 | IBAC'S operational practice

### **IBAC's operational practice before the introduction of Condor**

The statement below of IBAC's operational practice is based on: (i) briefings given to the Inspectorate by IBAC about its policies and procedures in the assessment and determination of police misconduct complaints including the training of IBAC staff who process and assess complaints; (ii) the content of IBAC's Assessment and Review Unit Practices and Procedure Manual and associated template forms; (iii) IBAC's corporate and operational strategic plans and performance measures; (iv) the complaints that the Inspectorate receives about IBAC's handling of police misconduct complaints; (v) the inspection by the Inspectorate of samples of police misconduct complaint files in 2017 and 2018; and (vi) an understanding gained in the ordinary course of stakeholder engagement between the Inspectorate and IBAC.

On receipt by IBAC of a police misconduct complaint, the details of the complaint are entered into IBAC's record management system. Once entered, the complaint is allocated to an assessment and review officer (A&R officer) to assess the complaint. A&R officers report to team leaders led by an Assessment & Review manager (A&R manager). A&R officers may request a complainant to provide more information either for the purpose of clarifying the nature of the complaint or obtaining more information about the complaint. A&R

officers can also access the Victoria Police's Record of Complaints, Serious Incidents and Discipline (ROCSID) system to determine whether a complaint has already been lodged with Victoria Police and whether any investigation has occurred. A&R officers may also request access to the LEAP (Law Enforcement Assistance Program) system.

On assessing the information provided by a complainant in combination with any relevant system information, A&R officers make a recommendation as to the action to be taken by the Deputy Commissioner in accordance with section 58 of the IBAC Act. Those actions are to (i) dismiss the complaint, (ii) refer the complaint for investigation by the Chief Commissioner of Police and (iii) investigate the complaint by IBAC.

The process by which an A&R officer makes an assessment and a recommendation is as follows:

- A template known as a CAM form (Case Assessment Meeting) is populated by an A&R officer. The template is populated with each allegation arising from each complaint. Allegations are elements of the complaint extracted into individual incidents or events. One complaint may contain one or more allegations. Each allegation is classified using a set of descriptors of the allegation type and allegation sub-type. For example, an allegation type is 'duty failure' of a police officer and an allegation sub-type is 'fail to investigate'. An allegation is assessed

on what action to recommend. If the action recommended is to 'dismiss', the A&R officer selects from the list of statutory grounds for dismissal (outlined in section 1 of this report) which ground the A&R officer considers to be the appropriate ground for the dismissal of the complaint. The A&R officer also enters comments about the assessment the officer has made under the heading 'Comments' in the template.

- The populated template is considered by the A&R Manager and serves as a draft for a second template which is in the same form as the CAM form but with the title 'OPC report' and instead of the heading, 'Comments', the heading is 'Considerations for the OPC'. OPC stands for the 'Operations and Prevention Committee' made up of the IBAC Commissioner, the Deputy Commissioner and other IBAC executives. The OPC reports for all complaints files are accessible to all members of the OPC on hard copy complaint files and electronically through a records management system called TRIM. The OPC does not consider each OPC report at a meeting of the OPC. Instead, the OPC considers OPC reports 'by exception'. What this means is that the OPC will consider those complaints the Deputy Commissioner has identified for consideration by the OPC as well as any other OPC reports identified by another member of the Committee for consideration by the OPC. The Deputy Commissioner takes into account the consideration of the members of the OPC before making a determination on the allegations in the OPC reports. With respect to those OPC reports that are not considered by the OPC, the Deputy Commissioner makes a determination about those reports after the OPC meeting.
- Once the Deputy Commissioner makes a determination on the allegations of a given complaint, IBAC writes a letter to the complainant. The letter is in template form, indicating the determination of the Deputy Commissioner. If the complaint is dismissed the complainant is advised that his or her complaint does not warrant investigation. There is no field in the template to include the considerations in support of the determination. If the complaint is referred for investigation to the Chief Commissioner of Police, the complainant is advised of the same. There is no field in the template to include why it was decided by IBAC that the complaint be investigated by the Chief Commissioner of Police.
- Once a letter is sent to the complainant, the file is closed unless there is further correspondence from the complainant. The further correspondence may result in a new complaint to be assessed by IBAC or result in communication about the subject matter of the correspondence. Some complaints files referred to the Chief Commissioner of Police are marked for 'review' by IBAC, which means the investigation conducted by the Chief Commissioner of Police will be reviewed by A&R officers on the completion of the investigation. Other complaints are marked for 'strategic interest', which means their content falls into a category of complaint which raises systemic issues about police misconduct.

## **IBAC's operational practice following the introduction of Condor**

Condor is the central electronic repository of all information, assessments and decision making about complaints to IBAC both with respect to its police complaint jurisdiction and its public sector corruption jurisdiction.

The significant changes to IBAC's operational practice following the introduction of Condor include:

- Paper files are no longer generated and all actions on a complaint are managed electronically. The workflow for each step in the complaint management process is accessible to all IBAC personnel including the Deputy Commissioner. It shows intra staff consideration of complaints, for instance when an assessment by an A&R officer is reviewed by an A&R Team Leader and Manager and when a Team Leader allocates an assessment made by an A&R officer for further consideration. It also shows which complaints were referred to the OPC for consideration.<sup>14</sup>
- The Deputy Commissioner has access to all the information about each complaint received by IBAC through the Condor system. Condor requires that the Deputy Commissioner makes a determination against each and every allegation A&R officers have assessed and made recommendations about. There is no OPC report or its equivalent on Condor that can be generated and provided to the Deputy Commissioner in isolation from the information held by Condor on complaint files.

- The classifications of allegations have been refined to enable A&R officers to better categorise or classify the nature of the complaints received by IBAC. The refinements are in the form of new categories and sub-categories of behaviour or conduct by public officials and police.

## **IBAC's policy approach to the referral of police misconduct complaints both pre- and post-Condor**

As indicated in section 1 of this report, IBAC has a function of making referrals of complaints and other matters to public bodies, including the Chief Commissioner of Police. Whilst IBAC does not have the power to require a body to investigate a given referral, IBAC may outline its expectations to the body about the referrals.

Whilst there is no specific statutory provision in the IBAC Act for the review of matters referred by IBAC to the Chief Commissioner of Police or other body, IBAC has conducted numerous reviews. IBAC has conducted certain reviews in 'real time' alongside an investigation by Victoria Police. The reviews conducted by IBAC are reported in IBAC's annual reports and other reports published on its website.

IBAC also refers certain police misconduct complaints relating to civility and associated conduct to be managed through Victoria Police's Management Intervention Model (MIM). MIM matters are investigated by Victoria Police at the local level. IBAC considers that such referrals enable Victoria Police to address the performance and accountability of its personnel. The allegations are allocated to a superior officer in the same region as the officer against whom the allegation is made.

<sup>14</sup> It is noted that correspondence from IBAC to complainants relating to IBAC's assessment of their complaint is not generated from Condor. IBAC has advised the VI that such correspondence will be captured by Condor in the future.

The IBAC Commissioner gave an insight into IBAC's policy approach to the referral of complaints for investigation by the Chief Commissioner of Police in an appearance before the Parliamentary Committee in connection with its inquiry into the external oversight of police corruption and misconduct.<sup>15</sup> The IBAC Commissioner made it clear to the Committee that he considered police agencies such as Victoria Police to be ultimately responsible for the conduct of police officers and the oversight role of IBAC does not remove or diminish that responsibility. The IBAC Commissioner related to the Committee that IBAC must refer matters to the Chief Commissioner of Police in circumstances where IBAC does not have the necessary powers to effectively investigate the matters. The IBAC Commissioner also related to the Committee that IBAC's investigative resources are required under the IBAC Act to prioritise serious or systemic corrupt conduct by Victoria Police rather than complaints about police misconduct which cannot be so classified. The full text of the IBAC Commissioner's submission to the Committee in those matters appears in the footnote.<sup>16</sup>

15 The transcript of the hearing of the Commissioner is dated 5 February 2018 and found in the Parliamentary Committees website attached to the IBAC Parliamentary Committee inquiry into the external oversight of police corruption and misconduct in Victoria tabled on 4 September 2018. [www.parliament.vic.gov.au/images/stories/committees/IBACC/Transcripts/police\\_oversight\\_transcripts/IBACC\\_5\\_February\\_2018\\_External\\_oversight\\_of\\_police\\_IBAC\\_closed.pdf](http://www.parliament.vic.gov.au/images/stories/committees/IBACC/Transcripts/police_oversight_transcripts/IBACC_5_February_2018_External_oversight_of_police_IBAC_closed.pdf)

16 IBAC Commissioner stated:  
*"Under the Act, whilst IBAC can undertake own investigations in limited circumstances, the process that is followed is to refer back to Victoria Police most complaints which come to IBAC. Speaking both personally and on behalf of the institution, I would like to make it clear I think that is an extremely sound policy and for various reasons, some of which I will elaborate on, any alternative arrangement — that is, one that contemplates that in certain circumstances matters should not be referred back to VicPol — has both policy and pragmatic sound reasons for rejecting such an alteration in policy. As for the pragmatic reasons... were IBAC to be required to investigate as a mandatory requirement particular areas of activity, there would be quite extraordinary practical implications for IBAC. We do not have the resources. If we were to significantly increase our responsibility in terms of investigating certain crimes, we would need a different location, we would need a vast increase in the number of staff, the powers that we are able to exercise, and we would not be able to give effect to what presently is enshrined as the policy in the act — namely, to give primary focus to serious misconduct, whether it be systemic or just serious, in the area of police activity. So there are practical reasons why that is just a policy shift which would carry with it huge practical consequences. But, may I just turn for a moment to policy reasons why that is not an acceptable course — that is, to take away from VicPol the capacity to investigate at all certain areas of criminal activity. This is not a new question. If we go back to the time when the federal police were first created in 1975, Michael Kirby conducted an extensive examination of where the powers to investigate police corruption should reside, and he reached the conclusion that, whilst they should be independent oversight of what a police authority should do, the ultimate responsibility for investigating and prosecuting corrupt activity by federal police must remain with them."*

The IBAC Commissioner specifically addressed the Committee on what he considered was IBAC's obligation to refer complaints to the Chief Commissioner of Police for investigation in circumstances where IBAC does not have the breadth of investigative powers to effectively investigate a complaint of police misconduct. That obligation to refer, the IBAC Commissioner stated, may even arise in circumstances where it would be more appropriate for IBAC to investigate rather than the Chief Commissioner of Police.

The IBAC Commissioner said to the Committee:

*"What significance does the absence of those powers have? As the committee noted in its last report, section 73 of the IBAC Act provides that in the event that IBAC concludes that it is more appropriate for some other entity to investigate a complaint, it must — we are obliged to — return the matter to that entity. In all of those cases where the absence of these powers impedes our ability to adequately investigate the matter, we are as a matter of course obliged to return the matter to the Chief Commissioner — and we have had to do that on a number of occasions where it would plainly have been better had IBAC investigated the matter itself."<sup>17</sup>*

17 Ibid. Page 5 of the transcript

# 3 | Methodology

In January 2017 the Inspectorate commenced a desk top review of the policy and procedure of IBAC for the receipt, assessment and determination of complaints made to IBAC about police misconduct. The purpose of the desk top review was to enable the Inspectorate to have an insight into the application of IBAC's policy and procedure in practice. The desk top review was informed by consultations with IBAC's then Manager of Assessment and Review and involved an inspection of 50 hard copy police misconduct complaint files.

After conducting the desk top review, the Inspectorate decided to consider aspects of the process used by IBAC to assess and determine complaints about police misconduct. In April and May 2018 the Inspectorate consulted with IBAC about building on the 2017 inspections by conducting a preliminary review of 100 completed police misconduct complaint files that had been closed in the calendar year beginning January 2018. IBAC maintained hard copy files and a records management system called TRIM which stored the documents on the hard copy files electronically. The Inspectorate accessed IBAC's records on TRIM at the offices of the Inspectorate.

The selected files were inspected by the Inspectorate over May and June of 2018. Files excluded from this review were non-police complaints, notifications from Victoria Police to IBAC about complaints it received from the public and complaints determined to be outside jurisdiction. On excluding those files, 87 complaint files were within the scope of the review and out of those

87 complaints, 261 allegations were within scope. As indicated in section 2 of this report, one complaint may contain one or more allegations where each allegation describes different incidents of police misconduct by one or more police officers.

An audit tool in the form of set questions was used by the Inspectorate to extract information from each of the complaint files about the assessments and recommendations A&R officers made and the determinations that the Deputy Commissioner made in relation to the 261 allegations that comprised the 87 complaints. The audit tool was used by the Inspectorate to obtain information recorded in the complaint files about the assessments and recommendations. It was not used to obtain information from the IBAC officers who recorded the information in the files.

As noted in the Overview, on consulting with IBAC about the preliminary review and on being briefed by IBAC about IBAC's new complaint management system, Condor, the Inspectorate and IBAC agreed that it would not be necessary for the Inspectorate to consider additional complaint files to complete a review of IBAC's former complaint management system with respect to the analysis recorded by IBAC under that system.

The Inspectorate informed IBAC on 15 March 2019 that it would expand its review of IBAC's assessment and determination process with respect to the recording of an analysis of police complaints by inspecting a small sample of 50 police complaint files (made up of 130 allegations) processed under Condor in November 2018. An audit tool made up of

set questions was used by the Inspectorate to extract information from the 50 complaint files in relation to all 130 allegations. This aspect of the review was conducted in April 2019 by Inspectorate officers at the offices of IBAC. They were given guidance by IBAC officers on how to navigate the Condor system and provided with access to the Condor system for the purpose of inspecting the 50 files. The Inspectorate compared the analysis recorded by IBAC in the Condor sample of files with that recorded by IBAC in the sample of files inspected by the Inspectorate under IBAC's former complaint management system.

# 4 | Inspection of complaints under IBAC's pre-condor system

## 4.1 | Classification of allegations

As outlined in section 2 of this report, A&R officers categorise or classify each allegation of a complaint into a 'type of allegation'. Each 'type of allegation' has sub-types which A&R officers select to specifically categorise a given allegation. There were 261 allegations in the 87 complaints reviewed by the Inspectorate. Figure 1 lists the allegation type used by IBAC in the 261 allegations and the number of allegations classified under each allegation type. The largest proportion of allegation types in the 87 complaints is 'duty failure', the alleged failure of police officers to perform a duty. This allegation type was used in 47% of the 261 allegations. A selection of this allegation type by A&R officers is guided by the content of its sub-types. Examples of 'sub-types' for the allegation type 'duty failure' are failure to investigate, inadequate investigation and failure to provide advice, information or assistance.

**FIGURE 1**  
**Allegation types reviewed in pre-condor sample**

<b>ALLEGATION TYPE</b>	<b>NUMBER OF ALLEGATIONS</b>
Duty Failure	122
Inappropriate Behaviour	60
Corrupt Conduct	30
Criminality/Corruption	17
Information Mismanagement	10
Assault	8
Sexual Assault	3
Admin / Procedural / Service issue	3
Property / Equip / Exhibit Management	2
Traffic related	2
Misconduct	2
Drug Involvement	1
Human Rights	1
<b>Total</b>	<b>261</b>

## 4.2 | Recommendations by A&R officers to Deputy Commissioner

As outlined in section 2 of this report, A&R officers assess the allegations of a complaint and make recommendations to the Deputy Commissioner of IBAC as to what action the Deputy Commissioner may take. A&R officers recommended to the Deputy Commissioner that 71% (185) of allegations be dismissed and 29% (76) referred to the Chief Commissioner of Police for investigation. The highest proportions of allegations recommended for dismissal were duty failure (77), inappropriate behaviour (45), corrupt conduct (28), and criminality/corruption

(14). The 29% that were recommended for referral to the Chief Commissioner of Police for investigation included allegations of duty failure (45), inappropriate behaviour (15) and assault (6). Except for the 'allegation type', 'assault', it was more likely in this sample of allegations for an allegation to be dismissed rather than referred to the Chief Commissioner of Police for investigation. No allegations were recommended by A&R officers for investigation by IBAC.

Figure 2 lists the number of allegations classified into types of allegations that A&R officers recommended the Deputy Commissioner dismiss or refer to the Chief Commissioner of Police for investigation.

**FIGURE 2**  
**Allegation types recommended for dismissal or referral**

ALLEGATION TYPE	DISMISS	REFER	TOTAL
Duty Failure	77	45	122
Inappropriate Behaviour	45	15	60
Corrupt Conduct	28	2	30
Criminality/Corruption	14	3	17
Information Mismanagement	7	3	10
Assault	2	6	8
Sexual Assault	1	2	3
Admin / Procedural / Service issue	3	0	3
Property / Equip / Exhibit Management	2	0	2
Traffic related	2	0	2
Misconduct	2	0	2
Drug Involvement	1	0	1
Human Rights	1	0	1
<b>Total</b>	<b>185</b>	<b>76</b>	<b>261</b>

### 4.3 | Content of entries in OPC reports in support of dismissal recommendations

As indicated in section 2 of this report, A&R officers enter their assessment of allegations into OPC reports. There is a field in OPC template reports for A&R officers to enter one or more statutory grounds under section 67(2) of the IBAC Act for the recommended dismissal of allegations. In the 185 allegations recommended for dismissal by A&R officers, 94% of those allegations (174) cited the statutory grounds that (i) they 'lack substance or credibility' under section 67(2)(c) and (ii) 'in all the circumstances do not warrant investigation' under section 67(2)(g).

There is another field in the OPC report, titled 'considerations for the OPC' where A&R officers may make entries in support of their recommendations to dismiss the allegations on those statutory grounds.

In 57 of 185 allegations recommended for dismissal, A&R officers made entries related to the substance, credibility or merit of the allegations that addressed the statutory grounds for dismissal. In 45 of those 57 allegations, A&R officers made such entries by reference to internal source information such as ROCID (Record of Complaints and Serious Incidents) or LEAP (Law Enforcement Assistance Program) as well as information obtained from telephone contact with complainants. In 12 of those 57 allegations A&R officers made such entries by reference to other source information including written communications with complainants.

In 128 of the 185 allegations recommended for dismissal, the information that was entered by A&R officers was extracts from the content of the complaint itself or a summary of the complaint. Whilst this was the only information

entered in 49 of those 128 allegations the Inspectorate could infer from the content of other entries in the OPC reports why A&R officers considered the allegations lacked credibility or substance or otherwise did not warrant investigation. This inference was made by the Inspectorate when, for example, the content of the complaint just contains abuse, the content was incoherent as to what or who the complaint was about or the complainant was either anonymous or otherwise not able to be contacted by the A&R officer.

In the remaining 79 of those 128 allegations, it could not be inferred by the Inspectorate from other entries in the OPC reports why the A&R officer considered that the allegations lacked credibility or substance or otherwise did not warrant investigation.

### 4.4 | Content of entries in OPC reports in support of referral recommendations

As indicated in 4.3, A&R officers select from a field within the OPC template the statutory grounds in support of their recommendations to dismiss. A&R officers can also select from that field the statutory grounds in support of their recommendations to refer allegations for investigation by the Chief Commissioner of Police. In all allegations recommended for referral for investigation (76 of 261 allegations), A&R officers recommended that they be referred to the Chief Commissioner of Police for investigation under section 73 of the IBAC Act. As indicated in section 1 of this report, IBAC **must** refer to the Chief Commissioner of Police a complaint received by IBAC if, at any time, IBAC considers that (a) the subject matter of the complaint is relevant to the performance of the duties and functions or the exercise of powers of the Chief Commissioner of Police and (b) it would be more appropriate for the complaint to be

investigated by the Chief Commissioner of Police rather than by IBAC.

There is another field in OPC template reports, titled 'considerations for the OPC' which is also referred to in 4.3 above. A&R officers make entries in that field to support their recommendation to refer an allegation for investigation by the Chief Commissioner of Police.

In 19 of the 76 allegations recommended for referral, A&R officers made entries that indicated to the Inspectorate that A&R officers had considered the subject matter of the allegations as relevant to the performance of the duties of the Chief Commissioner of Police and had considered the appropriateness of referring those allegations to the Chief Commissioner of Police for investigation. This was indicated in entries made by A&R officers that related to the credibility, substance or merit of the complaint and any information drawn from ROCID or communications between the A&R officer and the complainant. However in all of these 19 allegations recommended for referral, there were no specific entries made by A&R officers that state why the allegations **must** be referred to the Chief Commissioner of Police for investigation rather than be investigated by IBAC. As indicated above, under section 73, IBAC must refer when it is more appropriate for the Chief Commissioner to investigate a complaint rather than it be investigated by IBAC.

In the remaining 57 of the 76 allegations recommended for referral, the entries made by A&R officers in support of their recommendations only contained an extract from the content of the complaint or a summary of the complaint. Those entries did not indicate to the Inspectorate why A&R officers considered that the subject matter of the allegations made it more appropriate for them to be referred to the Chief Commissioner of Police for investigation.

## 4.5 | Were the entries sufficient to support recommendations?

### Consideration of sufficiency

As noted in the Overview and Methodology sections of this report, the focus of the Inspectorate's review is what analysis of police complaints is recorded by IBAC, as opposed to any analysis conducted by IBAC officers which is not recorded by IBAC. The entries made by A&R officers in support of their recommendations to the Deputy Commissioner may be considered the analysis of the allegations by the A&R officers. For each entry made by A&R officers, the Inspectorate considered whether the entry constituted an analysis of the allegation. If the entry constituted an analysis, the entry was considered by the Inspectorate to be sufficient to support the recommendation made by the A&R officer to the Deputy Commissioner. If the entry did not constitute an analysis, the entry was considered insufficient to support the recommendation made by the A&R officer to the Deputy Commissioner. Where the entry that corresponds to the recommendation is not sufficient to constitute an analysis but there are other entries in the OPC report that are relevant to the allegation which would constitute an analysis, the Inspectorate has inferred that the A&R officer considered those entries and those entries constitute a sufficient analysis of the allegation.

In the case of recommendations to dismiss, where there is no entry why the A&R officers considered the allegations lacked credibility or substance or otherwise did not warrant investigation and it cannot be inferred from the content of the other entries in a given OPC report that the allegations lacked credibility or substance or otherwise did not warrant investigation, the entries do not in the Inspectorate's view constitute an analysis of the allegations.

In the case of recommendations to refer, where there is no entry why the A&R officers considered the allegations were appropriate for the Chief Commissioner of Police to investigate and it could not be inferred from other entries in a given OPC report why the A&R officers considered the allegations were more appropriate for the Chief Commissioner to investigate, the entries do not in the Inspectorate's view constitute an analysis of the allegations.

The Inspectorate did not use a scale of less serious to more serious allegations in considering whether a given entry by an A&R officer constituted an analysis of the allegation in support of the recommendations made. The Inspectorate looked for an analysis whether or not the allegation was of a serious nature. The Inspectorate accepts that complaints of a serious nature may attract a deeper level of analysis by A&R officers than complaints of a less serious nature. The Inspectorate does not, however, accept that allegations of a less serious nature do not

require any analysis to be recorded in support of a recommendation.

### Sufficiency of recommendations to dismiss by A&R officers

As indicated in 4.3 above, in 57 of the 185 allegations recommended for dismissal, entries were made by A&R officers that related to the credibility, substance or merit of the allegations. In 49 of the 185 allegations an inference could be made about the credibility, substance or merit of the allegations. The entries made in those allegations were considered sufficient by the Inspectorate to support the recommendations to dismiss. The entries made in the remaining 79 of the 185 allegations recommended for dismissal (where A&R officers only entered extracts from the content of the complaint or a summary of the complaint and an inference could not be made about the credibility, substance or merit of the allegations) were not considered sufficient by the Inspectorate to support the recommendations to dismiss. See Figure 3(a).

FIGURE 3(a)

### Sufficiency of entries recorded in OPC reports to support recommendations to Deputy Commissioner to dismiss allegations



### The sufficiency of the recommendations to refer

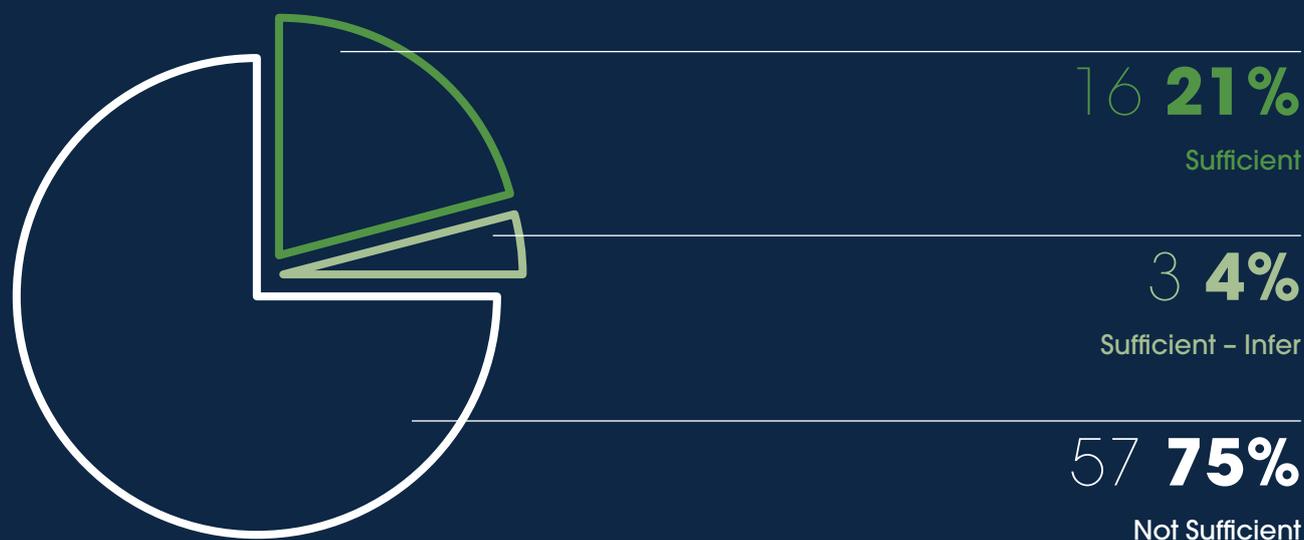
As indicated in 4.4 above, in 19 of the 76 allegations recommended for referral, entries were made that indicated to the Inspectorate that A&R officers had considered the subject matter of the allegations as appropriate for referral to the Chief Commissioner of Police to investigate. Those entries were considered sufficient by the Inspectorate to support the recommendations. In the remaining 57 allegations, where only the content of the complaint or a summary of the content of the complaint was entered and it could not be inferred from other entries in a given OPC report why the A&R officers considered the allegations were appropriate for the Chief Commissioner to investigate, those entries were not considered sufficient. They were not considered sufficient as they did not indicate why A&R officers considered that the subject matter of the allegations were more appropriate to be referred to the Chief Commissioner of Police for investigation. See Figure 3(b).

### The determination of the 261 allegations by the Deputy Commissioner

As indicated in section 2 of this report, the Deputy Commissioner is delegated by the IBAC Commissioner power to make determinations about what actions to take on complaints received by IBAC. Such actions are dismissal, referral to a body for investigation or investigation by IBAC. In the 87 complaints, comprised of 261 allegations, reviewed by the Inspectorate, the actions of the Deputy Commissioner only appeared on the OPC reports. Those actions are in the form of endorsements by the Deputy Commissioner of the recommendations of the A&R officers with respect to each complaint rather than each allegation.

**FIGURE 3(b)**

### Sufficiency of entries recorded in OPC reports to support recommendations to the Deputy Commissioner to refer allegations to Victoria Police for investigation



The Deputy Commissioner made changes to the recommendations of the A&R officers to dismiss in 14 of the 261 allegations. Those recommendations were altered or amended on the OPC form in the handwriting of the Deputy Commissioner. Those amendments relate to (i) 12 allegations where 'dismiss' was changed to 'refer' (ii) 1 allegation where 'dismiss' was changed to 'investigate' and (iii) 1 allegation where 'dismiss' was changed to 'disclose' under section 41(1) of the IBAC Act.<sup>18</sup> See Figure 3(c).

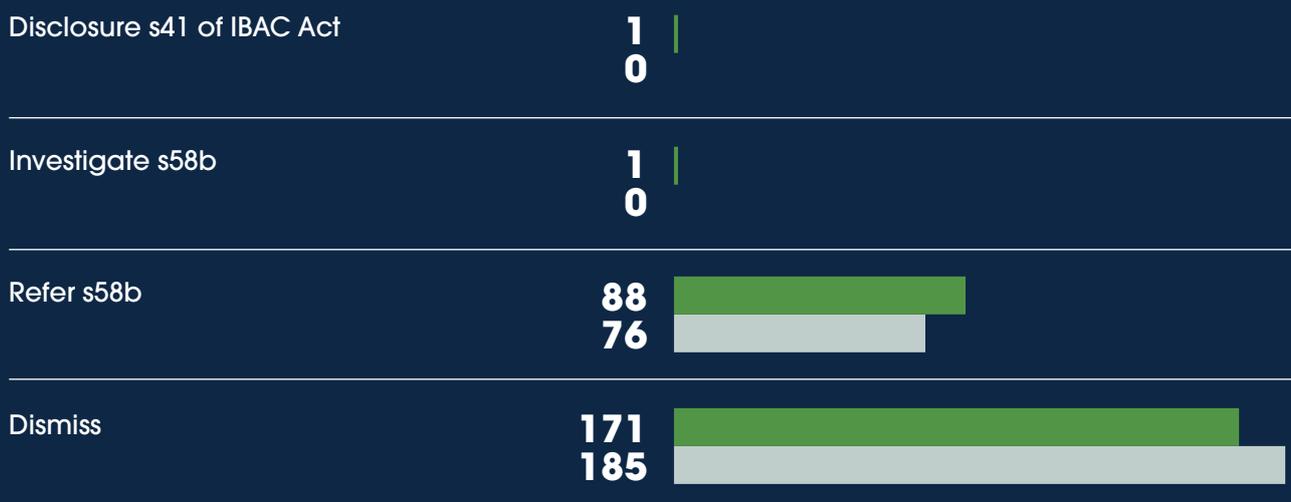
It is not clear from the OPC reports why the Deputy Commissioner did not accept the recommendations of the A&R officers in those 14 allegations. The Deputy Commissioner, in consultation with the Inspectorate in 2017 and in 2018, stated that he often considered the hard copy complaint files before making determinations. The Inspectorate accepts that this is the practice of the Deputy Commissioner.

It may be that the Deputy Commissioner chose to consider the information on the affected complaint files before making a determination (whether endorsing the recommendation of the A&R officers or making a different determination). The Deputy Commissioner may have also chosen to consult with members of the OPC before making a determination. However, there is no record of such consideration or consultation by the Deputy Commissioner either on the OPC reports or other documentation on the 87 complaint files inspected by the Inspectorate. The only record of the Deputy Commissioner's consideration of the allegations in those complaint files is that contained in the OPC reports.

The Deputy Commissioner, as a decision maker, may rely on or adopt the recommendations of A&R officers in OPC reports without accessing the file or consulting with members of the OPC.

**FIGURE 3(c)**

## **A&R Assessment Recommendation and Deputy Commissioner Determination**



**DC** **A & R**

<sup>18</sup> Section 41(1) provides that IBAC may at any time disclose information to a body which includes a law enforcement body such as Victoria Police if IBAC considers the information relevant to the performance of the duties and functions of the body.

However, where OPC reports do not have entries that contain an analysis in support of the recommendations made, the Deputy Commissioner has limited capacity to demonstrate that determinations made on the basis of the content of OPC reports alone are lawful and appropriate. The Inspectorate accepts that the Deputy Commissioner in making determinations applies the policy approach of IBAC with respect to the referral of complaints by IBAC to the Chief Commissioner of Police for investigation as outlined in section 2 of this report on pages 7 to 8. However no entry was made in the OPC reports either by the A&R officers or the Deputy Commissioner about the applicability of any aspect of this policy approach in support of the determinations of the Deputy Commissioner to refer those complaints for investigation by the Chief Commissioner of Police.

#### **FINDING 1**

In the majority of complaint files reviewed by the Inspectorate, the entries recorded by A&R officers in the OPC reports under IBAC's former complaint management system to support the recommendations of the A&R officers and the determinations of the Deputy Commissioner did not constitute an analysis of the allegations. The absence of a recorded analysis diminishes the transparency of IBAC's assessment and determination process in managing complaints about police misconduct.

# 5 | Inspection of complaints under IBAC's Condor system

In Condor, there is no OPC report process and it is quite clear on the Condor system what A&R officers and the Deputy Commissioner accessed in the assessment of a given complaint and what informed the determinations of the Deputy Commissioner.

## Classification of allegations

The 130 allegations contained in the 50 complaints inspected by the Inspectorate in Condor are classified under a list of 'type of allegation' which is different to the classification in IBAC's former system. Figure 4 below shows the list under Condor. By comparison, Figure 1 in section 4 of this

report shows the list under the former system. The largest proportion of 'type of allegation' in the 130 allegations is 'breach of professional boundaries'. This classification was made by A&R officers in 33% of the allegations reviewed.

Under each 'type' of allegation, a corresponding sub-type is also provided for selection by A&R officers. Figure 5 on page 20 lists the sub-types for an allegation categorised as 'breach of professional boundaries'. The highest sub-type under 'breach of professional boundaries' was 'bullying and harassment' in 42% of the 43 allegations.

**FIGURE 4**  
**Allegation types reviewed in Condor sample**

ALLEGATION TYPE	NUMBER OF ALLEGATIONS	PERCENTAGE
Breach of Professional Boundaries	43	33%
Inaction	36	28%
Force	18	14%
Obstruction of justice	14	11%
Misuse of resources	8	6%
Collusion	5	4%
Criminal behaviour, drugs and vices	2	1%
Not in jurisdiction	2	1%
Favouritism	1	1%
Theft	1	1%
<b>Total</b>	<b>130</b>	<b>100%</b>

## Accuracy of classification

The Inspectorate considered whether the content of the complaint had a nexus to the description of the allegation type and sub-type selected by the A&R officer. In 128 of the 130 allegations, the Inspectorate considered that there was a logical nexus between the description of the allegation and the corresponding 'allegation type' selected by A&R officers. In 2 of the 130 allegations, the Inspectorate did not consider there was such a nexus.

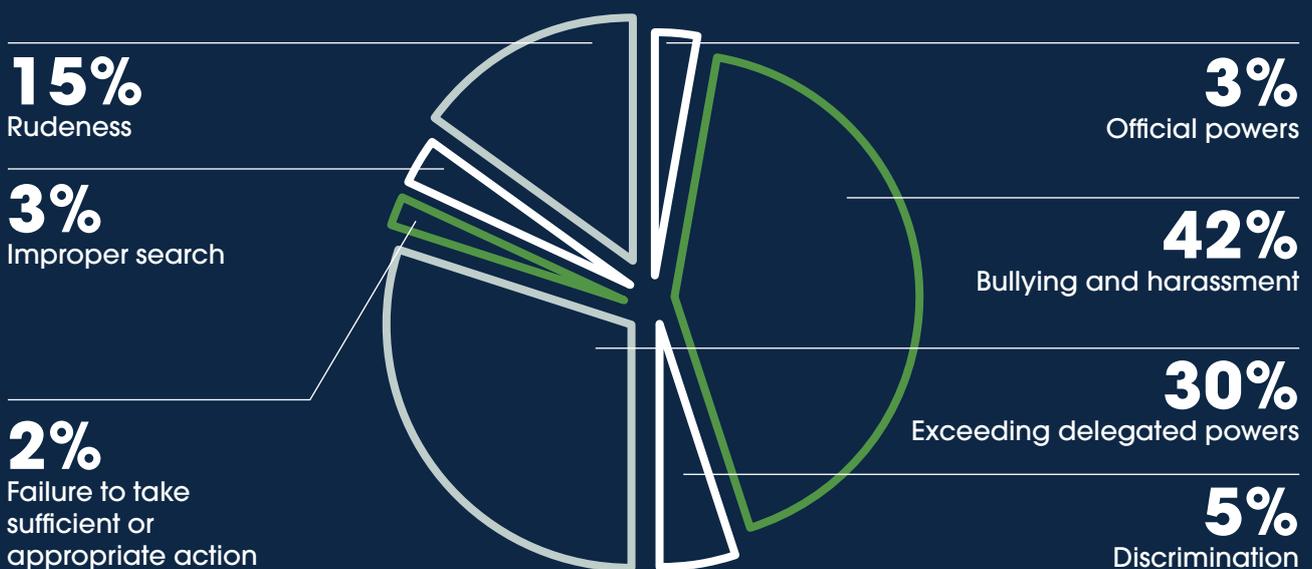
## Recommendations of A&R officers and determinations of Deputy Commissioner

A&R officers recommended the dismissal of 70 or 54% of the 130 allegations and recommended the referral of 58 or 45% of allegations to the Chief Commissioner of Police for investigation. The Deputy

Commissioner determined that 65 or 50% of the 130 allegations warranted dismissal and referred 63 or 49% of allegations to the Chief Commissioner of Police for investigation. A&R officers recommended, and the Deputy Commissioner endorsed, one allegation to be investigated by IBAC and another as out of jurisdiction. Figure 6 shows the recommendations made by A&R officers against the determinations made by the Deputy Commissioner.

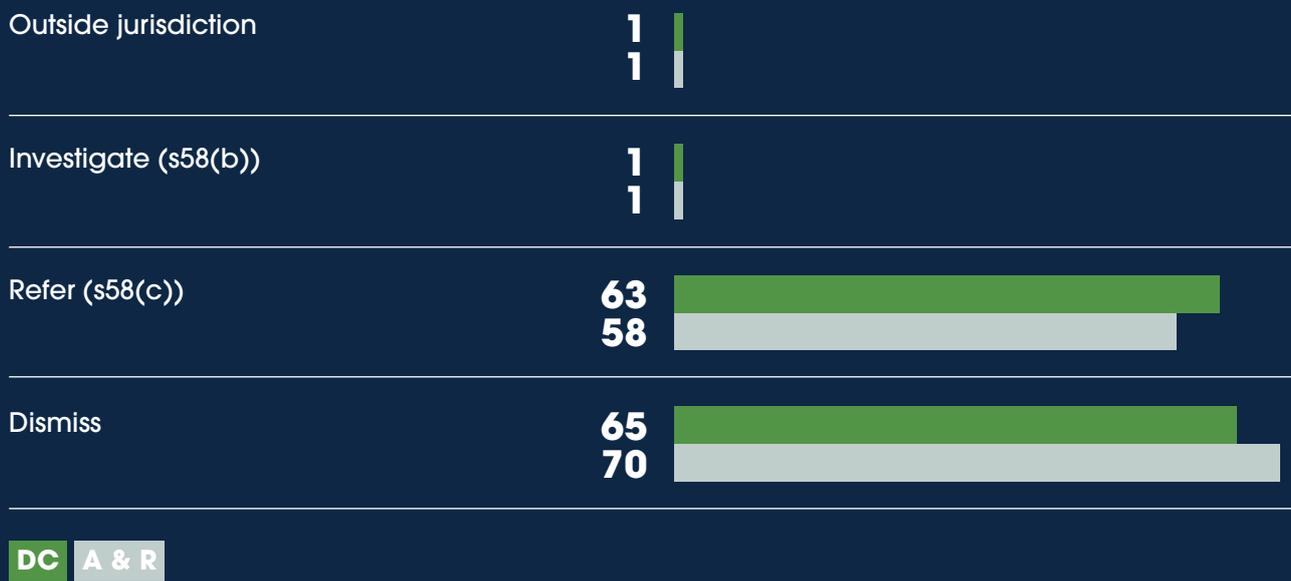
In the 65 allegations determined to be dismissed by the Deputy Commissioner, 33 or 49% were dismissed solely under section 67(2)(g) of the IBAC Act (in all the circumstances, the conduct does not warrant investigation), 5 solely under s67(2)(c) of the IBAC Act (the complaint lacks substance or credibility) and a further 26 or 40% were dismissed under both those sections. Figure 7 illustrates the statutory grounds upon which the 65 allegations were dismissed.

**FIGURE 5**  
**Breach of professional boundaries sub-types**



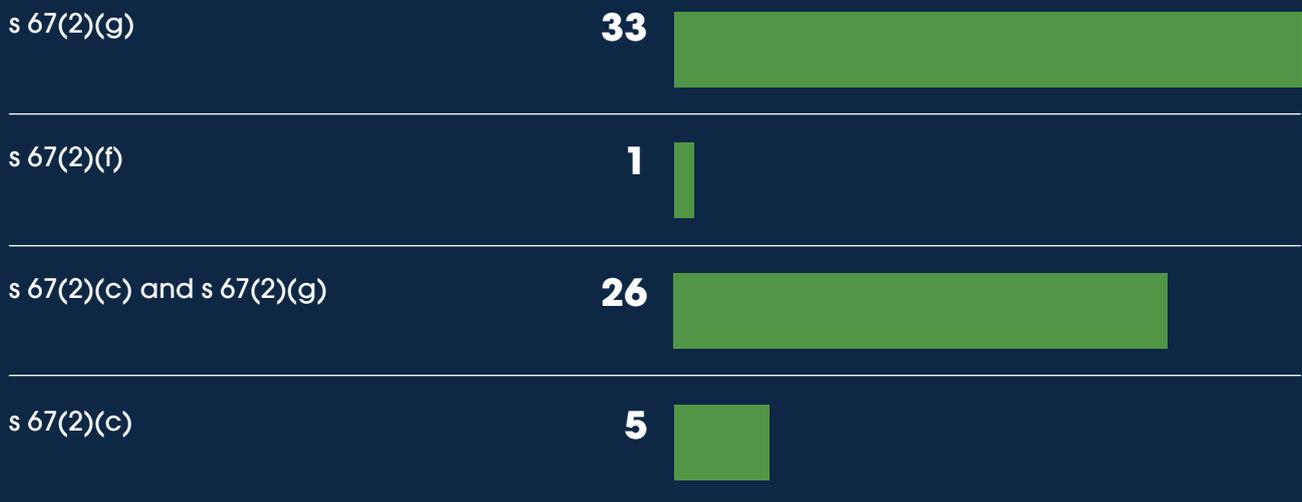
**FIGURE 6**

## A&R Assessment Recommendation and Deputy Commissioner Determination



**FIGURE 7**

## Statutory grounds for dismissal of allegations by Deputy Commissioner



## Sufficiency of Analysis – Overview

A&R officers made entries in Condor to support the recommendations they made to the Deputy Commissioner about the allegations in a given complaint. The Inspectorate considered whether those entries constituted an analysis of the allegations. If the entries constituted an analysis, the entries were considered by the Inspectorate to be sufficient to support the recommendation made by the A&R officer to the Deputy Commissioner. If the entries did not constitute an analysis, the entries were considered by the Inspectorate to be insufficient to support the recommendation made by the A&R officer to the Deputy Commissioner.

In the case of recommendations to dismiss by A&R officers, where the entries of the A&R officers did not indicate why the allegations lacked credibility, substance or merit, the Inspectorate did not consider that the entries constituted an analysis. In the case of recommendations to refer by A&R officers, where the entries of the A&R officers did not indicate why the allegations were more appropriate for the Chief Commissioner of Police to investigate, the Inspectorate did not consider that the entries constituted an analysis.

Based on the data discussed below, in the case of dismissals, the Inspectorate considered that in the majority of allegations, entries made by A&R officers about the substance, credibility or merit of the allegations constituted an analysis by A&R officers of the allegations that was sufficient to support their recommendations to dismiss the allegations. In the case of referrals, the Inspectorate considered that in the majority of allegations, the entries indicated to the Inspectorate that A&R officers had considered the subject matter of the allegations as

relevant to the performance of the duties of the Chief Commissioner of Police and had considered the appropriateness of referring those allegations to the Chief Commissioner of Police for investigation. Those entries were considered by the Inspectorate to constitute an analysis by A&R officers that was sufficient to support their recommendations to refer the allegations.

## Sufficiency of analysis by A&R officers in support of recommendations

### Dismissals

In 61 of 70 allegations recommended for dismissal in the sample of 130 allegations, A&R officers entered an analysis of the substance, credibility or merit of the allegations that addressed a statutory ground(s) for dismissal. In the remaining 9 allegations recommended for dismissal the entries were not sufficient to support an analysis that addressed a statutory ground(s). What was entered by A&R officers was either extracts of the complaint or a summary of the complaint (2) or bare conclusions that the information in the allegations is not sufficient or lacks specificity to demonstrate police misconduct (7). Figure 8(a) on page 25 illustrates the sufficiency of entries recorded for dismissals.

### Referrals

In 43 of 58 allegations recommended for referral to Victoria Police for investigation in the sample of 130 allegations, A&R officers made entries that related to the credibility, substance or merit of the complaint and information drawn from ROCID or communications between the A&R officer and the complainant but did not specify why it was more appropriate for the allegation to be investigated by the Chief Commissioner of Police rather than IBAC.

It could however be inferred from those entries that A&R officers considered that the subject matter of the allegations was relevant to the performance of the duties of the Chief Commissioner of Police and warranted investigation by the Chief Commissioner of Police. Those entries were considered sufficient by the Inspectorate to constitute an analysis that supported the recommendations of the A&R officers to the Deputy Commissioner. In the 15 remaining allegations either an extract of the content or a summary of the content of the complaint was recorded by A&R officers. Those entries did not constitute an analysis and the Inspectorate considered those entries insufficient to support the recommendations of the A&R officers to the Deputy Commissioner. Figure 8(b) illustrates the sufficiency of entries recorded for referrals.

It is noted that it was open to A&R officers to make entries in support of their recommendations to refer that included an application of IBAC's policy approach to referrals as outlined in section 2 of this report on pages 7 to 8. Certain entries made by the Deputy Commissioner in determinations to refer demonstrated an application of this approach.

## **FINDING 2**

The entries in the sample files processed under Condor showed a marked improvement in the recording of an analysis in IBAC's assessment and determination process as compared to the entries in the sample files processed under IBAC's former complaint management system. The presence of an analysis enhances the transparency of IBAC's assessment and determination process in managing complaints about police misconduct.

## **FINDING 3**

A record of why it is more appropriate for an allegation to be investigated by the Chief Commissioner of Police rather than IBAC that is consistent with IBAC's policy on referrals is a matter that ought to be recorded in Condor. This is especially the case given the mandatory nature of the legislation whereby IBAC must refer a complaint to another body when it is more appropriate that the other body investigate the complaint rather than IBAC.

FIGURE 8(a)

Sufficiency of entries recorded for dismissals

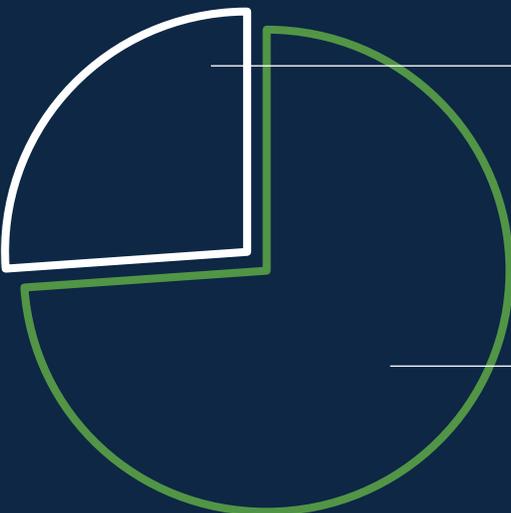


9 **13%**  
No

61 **87%**  
Yes

FIGURE 8(b)

Sufficiency of entries recorded for referrals



15 **26%**  
No

43 **74%**  
Yes

# 6 | Recommendations

## 1 |

That IBAC, in the continuous improvement of Condor, ensure recommendations and determinations to dismiss allegations are supported by a recorded analysis of the substance and credibility of allegations.

## 2 |

That IBAC, in the continuous improvement of Condor, ensure recommendations and determinations to refer allegations are supported by a recorded analysis of the substance and credibility of allegations as well as why the allegations must be referred to the Chief Commissioner of Police for investigation rather than be investigated by IBAC.

# 7 | IBAC's response to Finding 1 and Recommendations

IBAC responded to this report and the recommendations contained in it by a letter dated 14 August 2019. In that letter IBAC stated that it accepted the recommendations and will seek to enhance its procedures and systems to implement them. It offered to partner with the Inspectorate in implementing the recommendations through discussing with the Inspectorate the development of Condor to enhance the recording of IBAC's analysis of allegations of police misconduct.

The Inspectorate welcomes IBAC's response to the report and recommendations and its offer to work with the Inspectorate in implementing the recommendations.

In its letter, however, IBAC reiterated its June 2018 response that it rejected 'the finding from the Inspectorate's 2018 review process that IBAC's decision-making process lacked transparency'. This statement is relevant to Finding 1 in section 4 of this report. Finding 1 relates to IBAC's pre-Condor complaint management system. It is to the effect that in a majority of the complaint files reviewed by the Inspectorate, the entries recorded in that system by A & R officers to support their recommendations and the determinations of the Deputy Commissioner did not constitute an analysis of the allegations.

The finding states that the absence of a recorded analysis diminishes the transparency of IBAC's assessment and determination process in managing complaints about police misconduct. The Inspectorate notes IBAC's statement but stands by its finding as set out in this report.



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